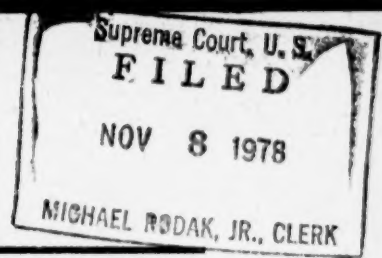


No. 78-448



In the Supreme Court of the United States

OCTOBER TERM, 1978

SANDRA LYNN WRIGHT, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE FOURTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.
*Solicitor General
Department of Justice
Washington, D.C. 20530*

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Petitioner contends that the court of appeals improperly upheld a grant of summary judgment for the United States by the district court. She also contends that the court of appeals failed to rule on all of the issues presented.

1. On August 28, 1973, petitioner was assaulted and raped by Jonathan Pollard, a member of the United States Marine Corps (Pet. App. 22). Petitioner filed suit against the United States in the United States District Court for the District of Maryland. She alleged that the government was negligent because: (1) it failed to give Pollard a thorough character background check when it accepted him for enlistment into the Marine Corps; (2) it failed to safeguard weapons at the Aberdeen Proving Grounds, allowing Pollard to remove a pistol and use it

during the rape; and (3) it failed to apprehend Pollard before the rape was committed and prevent him from leaving his base.

The district court granted summary judgment for the United States (Pet. App. 22-23). Viewing the evidence in the light most favorable to petitioner, the court found that no evidence would support the allegations of negligence and that there was, therefore, no disputed issue of material fact. See Fed. R. Civ. P. 56. The court of appeals affirmed (Pet. App. 13-14).

2. Petitioner contends that the district court and the court of appeals overlooked inferences that might tend to show negligent omissions by the government. But Rule 56 does not allow a party opposing summary judgment to speculate about inferences. It requires the party to set forth by affidavit "specific facts" (Rule 56(e)) to establish the existence of a disputed issue. Here the district court discussed the allegations made by petitioner and found that none of them was supported by any specific facts in the record (Pet. App. 24-29). The court of appeals agreed. There is no need for this Court to review that essentially factual conclusion, concurred in by two lower courts. *Berenyi v. Immigration Director*, 385 U.S. 630, 635 (1967).

Petitioner also maintains that the court of appeals failed to consider her three allegations of negligence, but instead ruled on only one of them. The court of appeals, however, listed each of the three arguments in its opinion (Pet. App. 14). Although it did not discuss each theory seriatim, it found that the government had not violated a duty of care owed to petitioner (*ibid.*). There is no reason to suppose that the court disregarded any of the theories of negligence listed in the opinion in coming to this conclusion.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

NOVEMBER 1978